

§ 404.320

§ 404.315(a). If the 5-month waiting period is not required because of your previous entitlement, your PIA is figured as if you were 62 years old when you become entitled to benefits this time. Your monthly benefit amount may be reduced if you receive worker's compensation or public disability payments before you become 65 years old as described in § 404.408. Your benefits may also be reduced if you were entitled to other retirement-age benefits before you attained full retirement age (as defined in § 404.409).

[68 FR 4704, Jan. 30, 2003]

§ 404.320 Who is entitled to a period of disability.

(a) *General.* A period of disability is a continuous period of time during which you are disabled. If you become disabled, you may apply to have our records show how long your disability lasts. You may do this even if you do not qualify for disability benefits. If we establish a period of disability for you, the months in that period of time will not be counted in figuring your average earnings. If benefits payable on your earnings record would be denied or reduced because of a period of disability, the period of disability will not be taken into consideration.

(b) *Who is entitled.* You are entitled to a period of disability if you meet all the following conditions:

(1) You have or had a disability as defined in § 404.1505.

(2) You are *insured for disability*, as defined in § 404.130 in the calendar quarter in which you became disabled, or in a later calendar quarter in which you were disabled.

(3) You file an application while disabled, or no later than 12 months after the month in which your period of disability ended. If you were unable to apply within the 12-month period after your period of disability ended because of a physical or mental condition as described in § 404.322, you may apply not more than 36 months after the month your disability ended.

(4) At least 5 consecutive months go by from the month in which your pe-

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riod of disability begins and before the month in which it would end.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21930, May 16, 1983; 51 FR 10616, Mar. 28, 1986]

§ 404.321 When a period of disability begins and ends.

(a) *When a period of disability begins.* Your period of disability begins on the day your disability begins if you are insured for disability on that day. If you are not insured for disability on that day, your period of disability will begin on the first day of the first calendar quarter after your disability began in which you become insured for disability. Your period of disability may not begin after you have attained full retirement age as defined in § 404.409.

(b) *When disability ended before December 1, 1980.* Your period of disability ends on the last day of the month before the month in which you become 65 years old or, if earlier, the last day of the second month following the month in which your disability ended.

(c) *When disability ends after November 1980.* Your period of disability ends with the close of whichever of the following is the earliest—

(1) The month before the month in which you attain full retirement age as defined in § 404.409.

(2) The month immediately preceding your termination month (§ 404.325); or

(3) If you perform substantial gainful activity during the reentitlement period described in § 404.1592a, the last month for which you received benefits.

(d) *When drug addiction or alcoholism is a contributing factor material to the determination of disability.* (1) Your entitlement to receive disability benefit payments ends the month following the month in which, regardless of the number of entitlement periods you may have had based on disability where drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535)—

(i) You have received a total of 36 months of disability benefits. Not included in these 36 months are months in which treatment for your drug addiction or alcoholism is not available, months before March 1995, and months

for which your benefits were suspended for any reason; or

(ii) Your benefits have been suspended for 12 consecutive months because of your failure to comply with treatment requirements.

(2) For purposes other than payment of your disability benefits, your period of disability continues until the termination month as explained in § 404.325.

[49 FR 22271, May 29, 1984, as amended at 60 FR 8145, Feb. 10, 1995; 65 FR 42782, July 11, 2000; 68 FR 4704, Jan. 30, 2003]

§ 404.322 When you may apply for a period of disability after a delay due to a physical or mental condition.

If because of a physical or mental condition you did not apply for a period of disability within 12 months after your period of disability ended, you may apply not more than 36 months after the month in which your disability ended. Your failure to apply within the 12-month time period will be considered due to a physical or mental condition if during this time—

(a) Your physical condition limited your activities to such an extent that you could not complete and sign an application; or

(b) You were mentally incompetent.

§ 404.325 The termination month.

If you do not have a disabling impairment, your termination month is the third month following the month in which your impairment is not disabling even if it occurs during the trial work period or the reentitlement period. If you continue to have a disabling impairment and complete 9 months of trial work, your termination month will be the third month following the earliest month you perform substantial gainful activity or are determined able to perform substantial gainful activity; however, in no event will the termination month under these circumstances be earlier than the first month after the end of the reentitlement period described in § 404.1592a.

Example 1: You complete your trial work period in December 1999. You then work at the substantial gainful activity level and continue to do so throughout the 36 months following completion of your trial work period and thereafter. Your termination month will be January 2003, which is the first

month in which you performed substantial gainful activity after the end of your 36-month reentitlement period. This is because, for individuals who have disabling impairments (see § 404.1511) and who work, the termination month cannot occur before the first month after the end of the 36-month reentitlement period.

Example 2: You complete your trial work period in December 1999, but you do not do work showing your ability to do substantial gainful activity during your trial work period or throughout your 36-month reentitlement period. In April 2003, 4 months after your reentitlement period ends, you become employed at work that we determine is substantial gainful activity, considering all of our rules in §§ 404.1574 and 404.1574a. Your termination month will be July 2003; that is, the third month after the earliest month you performed substantial gainful activity.

[65 FR 42782, July 11, 2000]

RULES RELATING TO CONTINUATION OF BENEFITS AFTER YOUR IMPAIRMENT IS NO LONGER DISABLING

SOURCE: 70 FR 36505, June 24, 2005, unless otherwise noted.

§ 404.327 When you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services.

(a) *What is an appropriate program of vocational rehabilitation services, employment services, or other support services?* An appropriate program of vocational rehabilitation services, employment services, or other support services means—

(1) A program that is carried out under an individual work plan with an employment network under the Ticket to Work and Self-Sufficiency Program under part 411 of this chapter;

(2) A program that is carried out under an individualized plan for employment with—

(i) A State vocational rehabilitation agency (*i.e.*, a State agency administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 720–751) under 34 CFR part 361; or

(ii) An organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of